@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7273 of 2004
with
SPECIAL CIVIL APPLICATION No 9919 of 2004
with
SPECIAL CIVIL APPLICATION No 9920 of 2004
with
SPECIAL CIVIL APPLICATION No 9921 of 2004
with
SPECIAL CIVIL APPLICATION No 7274 of 2004
with
SPECIAL CIVIL APPLICATION No 7275 of 2004
with
SPECIAL CIVIL APPLICATION No 7276 of 2004
with
SPECIAL CIVIL APPLICATION No 7277 of 2004
with
SPECIAL CIVIL APPLICATION No 6278 of 2004
with
SPECIAL CIVIL APPLICATION No 16854 of 2003
with
SPECIAL CIVIL APPLICATION No 17065 of 2003
with
SPECIAL CIVIL APPLICATION No 17067 of 2003
with
SPECIAL CIVIL APPLICATION No 9918 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

MANTORA AGRO INDUSTRIES LTD.

Versus

UNION OF INDIA

---

Appearance:

1. Special Civil Application No. 7273 of 2004

MR PARESH M DAVE for Petitioners

MR JITENDRA MALKAN for Respondents

---

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 09/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. In all these writ petitions demand was made by the respondent No.2-Assistant Commissioner of Customs from all the petitioners, separately calling upon them to make payment of differential customs duty on Crude Palm Oil (Edible Grade) imported in the month of August, 2003 or prior to it.

#. It was challenged on the ground that since notifications issued under Section 14(2) of the Customs Act, 1962 determine the tariff value of crude palm oil, the respondents have no authority to levy customs duty on any tariff value higher than the tariff value determined by the notifications issued under Section 14(2) of the customs Act. However, it was conceded that if concessional rate of customs duty was not available for crude palm oil not falling within the description given in the notifications issued under section 25(1) of the Customs Act, then customs duty may be leviable at the appropriate rate on crude palm oil not covered by the

notifications under section 25(1) of the Act. It was also submitted that at the most for the period in question the respondent authorities can demand customs duty @70% (as against concessional rate @65%) on the crude palm oil valued at US$ 390 as per notification dated 14.5.2003 or at such tariff value as may be determined from time to time under section 14(1) of the Customs Act.

#. It seems that initially notice was ordered to be issued to the respondents and in response to the said notice, the then learned Standing Counsel appearing for the respondents submitted that looking to the object of section 14(2) of the Act, the petitioners were required to pay customs duty at the ordinary rate of 70% on the entire value of US$ 425 per M.T. which was the transaction value of the goods and the authorities were justified in treating the higher value under Section 14(1) of the Customs Act as the value of the imported goods. It was also submitted that the customs duty was leviable @70% on crude palm oil which does not answer the description given in the notification dated 1.8.2003 under section 25(1) of the Act.

#. Having heard aforesaid rival contentions raised by the learned counsel for the parties, the Division Bench of this court (Coram : M.S.Shah & A.M.Kapadia, JJ.) was prima facie of the opinion that neither the provisions of section 14 of the Customs Act nor the separate notifications issued under it provide that customs duty shall be levied on the tariff value or the transaction value, whichever is higher. In view of the prima facie opinion, Their Lordships passed the following interim order :-

"INTERIM ORDER

(i) The respondents shall levy customs duty at the ordinary rate (which is presently stated to be 70%) on the tariff value under sub-section (2) of Section 14 of the Customs Act so long as such tariff value is stipulated through any notification under sub-section (2) of Section 14 of the Act.

(ii) The Bank Guarantee given by the petitioners may be invoked for adjusting the duty liability which the petitioners have incurred so far on import of crude palm oil on the basis of the above interim order.

The balance amount shall be adjusted against the customs duty liability of the petitioners for the import of crude palm oil or any other commodity.

(iii) This interim order is passed without prejudice to the rights and contentions of the parties.

Sd/-
(M.S.Shah, J.)

Sd/-
(A.M.Kapadia, J.)"

#. It seems that as per the aforesaid interim order dated 3.2.2004 passed by the Division bench of this court while admitting all these writ petitions, Assistant Commissioner of Customs, GAPL, Mundra, addressed a letter dated 25.6.2004 to only two petitioners; (i) M/s.Bhatinda Chemicals Ltd. of Special Civil Application No.17065/03 and (ii) M/s.Dinesh Oils Ltd. of Special Civil Application No.17067/03 informing them that tariff value for "other palm oil" was fixed through a notification under section 14(2) of the Customs Act for the first time on 17.10.2003 and not earlier, therefore, their bills of entry covered by the petitioners filed before 17.10.2003 when no tariff value was fixed for "other palm oil". Accordingly, he requested both M/s.Bhatinda Chemicals Ltd. and M/s.Dinesh Oils Ltd. to pay the differential duty as demanded from them at the earliest.

It is stated at the Bar by learned counsel Dave appearing in all these petitions that except those two petitioners; (i) M/s.Bhatinda Chemicals Ltd.; and (ii) M/s.Dinesh Oils Ltd., no other petitioner has received such letter from the Assistant Commissioner of Customs, GAPL, Mundra and another Assistant Commissioner of Customs, Kandla has not at all taken any decision. In view of the subsequent letter dated 25.6.2004 addressed by the Assistant Commissioner of Customs, with the permission of the court, Mr.Dave amended the aforesaid two writ petitions and made statement in rest of the petitions that they have not been served with any intimation from Assistant Commissioner of Customs.

#. In view of the peculiar facts and circumstances of the case, learned Standing Counsel, Mr.Malkan submitted that all these petitions may be disposed of by directing the petitioners to approach before the concerned Assistant Commissioner of Customs and satisfy them in

response to the demand made by them for the payment of differential customs duty on Crude Palm Oil (Edible Grade) imported by them in the month of August or prior to August, 2003 and in turn the concerned Assistant Commissioner, Customs may be directed to take fresh decision after hearing the petitioners or their representatives to which learned counsel, Mr.Dave for the petitioners has no objection.

#. In view of the above, all the petitioners are directed to first either personally remain present or through their representatives before the concerned Assistant Commissioner, Customs on 15.12.2004. On that day, the concerned Assistant Commissioner of Customs shall give fixed date of hearing and after hearing the parties, they shall pass the orders in accordance with law, in each matter, as early as possible and not later than 31.3.2005.

With these observations and directions, all these petitions are disposed of, at this stage, with a liberty to the petitioners to challenge the decisions of the Assistant Commissioner of Customs, if they are adverse to the petitioners before appropriate forum by way of appropriate proceedings. Rule is discharged in all the writ petitions. Interim arrangement shall continue till then.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

*Pvv